



General Assembly

January Session, 2017

Amendment

LCO No. 6997



Offered by:

SEN. LOONEY, 11th Dist.

SEN. FASANO, 34th Dist.

To: Senate Bill No. **442**

File No. 608

Cal. No. 329

"AN ACT CLARIFYING THE RIGHT TO ENFORCE ANTITRUST LAWS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective from passage*) In any action brought
4 under subsection (c) of section 35-32 of the general statutes or seeking
5 treble damages under section 35-35 of the general statutes, a defendant
6 that sells, distributes or otherwise disposes of any drug or device, as
7 defined in 21 USC 321, as amended from time to time:

8 (1) May not assert as a defense that the defendant did not deal
9 directly with the person on whose behalf the action is brought; and

10 (2) May, in order to avoid duplicative liability, prove, as a partial or
11 complete defense against a damage claim, that all or any part of an
12 alleged overcharge for a drug or device ultimately was passed on to
13 another person by a purchaser or a seller in the chain of manufacture,

14 production or distribution of the drug or device that paid the alleged
15 overcharge.

16 Sec. 2. Section 38a-477f of the general statutes is repealed and the
17 following is substituted in lieu thereof (*Effective October 1, 2017*):

18 (a) On and after January 1, 2016, no contract entered into or
19 renewed between a health care provider and a health carrier shall
20 contain a provision prohibiting disclosure of (1) billed or allowed
21 amounts, reimbursement rates or out-of-pocket costs, [and] or (2) any
22 data to the all-payer claims database program established under
23 section 38a-1091. [for the purpose of assisting] Information described
24 in subdivisions (1) and (2) of this subsection may be used to assist
25 consumers and institutional purchasers in making informed decisions
26 regarding their health care and informed choices among health care
27 providers and allow comparisons between prices paid by various
28 health carriers to health care providers.

29 (b) On and after October 1, 2017, no contract entered into between a
30 health care provider, or any agent or vendor retained by the health
31 care provider to provide data or analytical services to evaluate and
32 manage health care services provided to the health carrier's plan
33 participants, and a health carrier shall contain a provision prohibiting
34 disclosure of (1) billed or allowed amounts, reimbursement rates or
35 out-of-pocket costs, or (2) any data to the all-payer claims database
36 program established under section 38a-1091. Information described in
37 subdivisions (1) and (2) of this subsection may be used to assist
38 consumers and institutional purchasers in making informed decisions
39 regarding their health care and informed choices among health care
40 providers and allow comparisons between prices paid by various
41 health carriers to health care providers.

42 (c) If a contract described in subsection (a) or (b) of this section
43 contains a provision prohibited under said subsection, such provision
44 shall (1) be void and unenforceable, and (2) constitute an unfair
45 method of competition and unfair or deceptive practice prohibited by

46 sections 38a-815 to 38a-819, inclusive. The invalidity or
47 unenforceability of any contract provision under subdivision (1) of this
48 subsection shall not affect any other provision of the contract.

49 Sec. 3. (NEW) (*Effective October 1, 2017*) (a) On and after January 1,
50 2018, no contract for pharmacy services entered into in the state
51 between a health carrier, as defined in section 38a-591a of the general
52 statutes, or pharmacy benefits manager, as defined in section 38a-
53 479aaa of the general statutes, and a pharmacist shall contain a
54 provision prohibiting or penalizing, including through increased
55 utilization review, reduced payments or other financial disincentives, a
56 pharmacist's disclosure to an individual purchasing prescription
57 medication of information regarding (1) the cost of the prescription
58 medication to the individual, or (2) the availability of any
59 therapeutically equivalent alternative medications or alternative
60 methods of purchasing the prescription medication, including, but not
61 limited to, paying a cash price, that are less expensive than the cost of
62 the prescription medication to the individual.

63 (b) On and after January 1, 2018, no health carrier or pharmacy
64 benefits manager shall require an individual to make a payment for a
65 covered prescription medication in an amount greater than the lesser
66 of (1) the applicable copayment for such prescription medication, (2)
67 the allowable claim amount for the prescription medication, or (3) the
68 amount an individual would pay for the prescription medication if the
69 individual purchased the prescription medication without using a
70 health benefit plan, as defined in section 38a-591a of the general
71 statutes, or any other source of prescription medication benefits or
72 discounts.

73 (c) Any provision of a contract that violates the provisions of this
74 section shall be void and unenforceable and constitute an unfair
75 method of competition and unfair or deceptive practice prohibited by
76 sections 38a-815 to 38a-819, inclusive, of the general statutes. Each
77 pharmacy benefits manager or health carrier that enters into a contract
78 for pharmacy services with a pharmacy or pharmacist shall audit and

79 enforce the provisions of this section. The Insurance Commissioner
80 shall have the authority to audit a contract for pharmacy services upon
81 request and may request that such contracts be filed with the Insurance
82 Department for prior review and approval."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>October 1, 2017</i>	38a-477f
Sec. 3	<i>October 1, 2017</i>	New section